

PROB. 12B
(7/93)

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

ORIGINAL

United States District Court

for the

DISTRICT OF HAWAII

APR 14 2006

at 10 o'clock and 54 min. a.m.
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision
with Consent of the Offender**

(Probation Form 49, Waiver of Hearing is Attached)

Name of Offender: RUDY K. SOUZA

Case Number: CR 02-00549HG-01

Name of Sentencing Judicial Officer: The Honorable Helen Gillmor
Chief U.S. District Judge

Date of Original Sentence: 7/30/2003

Original Offense: Possession of an Unregistered Destructive Device, in violation of
26 U.S.C. § 5861(d), a Class C felony

Original Sentence: Thirty (30) months imprisonment and three (3) years supervised
release with the following special conditions: 1) That the defendant
is prohibited from possessing any illegal or dangerous weapons;
2) That the defendant participate in a mental health program at the
discretion and direction of the Probation Office; 3) That the
defendant participate in a substance abuse program, which may
include drug testing at the discretion and direction of the Probation
Office; and 4) That the defendant shall submit his person,
residence, place of employment, or vehicle to a search conducted
by the U.S. Probation Office at a reasonable time and in a
reasonable manner, based upon reasonable suspicion of
contraband or evidence of a violation of a condition of supervision.
Failure to submit to a search may be grounds for revocation. The
defendant shall warn any other resident that the premises may be
subject to search pursuant to this condition.

Modified

Sentence:

On 6/7/2005, Your Honor modified the conditions of supervision
based on the subject's use of methamphetamine and refusal to
comply with drug testing. The following special condition was
imposed: 5) That the defendant perform 50 hours of community
service as directed by the Probation Office.

On 1/13/2006, Your Honor modified the conditions of supervision based on the subject's refusal to comply with drug testing on 7/15/2005, 7/22/2005, 11/17/2005, 12/15/2005, and 12/29/2005. The following was imposed:

General Condition: That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

Special Condition No. 3: That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Type of Supervision: Supervised Release Date Supervision Commenced: 2/17/2005

PETITIONING THE COURT

[X] To modify the conditions of supervision as follows:

- 6) *That the defendant serve three (3) months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during nonworking hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office.*

CAUSE

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1. Special Condition No. 7 and the General Condition	The subject's urine specimen of 2/23/2006 tested positive for methamphetamine.
2. Special Condition No. 5	The subject failed to perform 50 hours of community service.

On 6/6/2005, Your Honor was informed that the subject's urine specimens of 5/2/2005 and 5/5/2005 tested positive for methamphetamine and that he refused to comply with drug testing on 4/15/2005 and 5/25/2005. As a sanction, the Court imposed an additional special condition that he perform fifty (50) hours of community service as directed by the Probation Office.

On 1/11/2006, Your Honor was notified that the subject refused to comply with drug testing on 7/15/2005, 7/22/2005, 11/17/2005, 12/15/2005, and 12/29/2005. As the subject was oriented to the requirements of the drug testing program, he was charged with refusal to comply with drug testing. When confronted following each of these violations, the subject stated that he simply forgot to call Hina Mauka. The subject was verbally reprimanded for his failure to report for drug testing. In light of U.S. vs. Stephens, our office recommended that the Court modify the mandatory drug testing condition (General Condition) and revise Special Condition No. 3 to include updated language. Your Honor concurred with this recommendation and no further action was taken.

This report serves to notify the Court of additional violations. On 2/23/2006, this officer conducted an unannounced home inspection of the subject's residence at 7:40 p.m. The subject provided a urine specimen to this officer, which was tested with a non-instrumented drug testing (NIDT) device, and was positive for methamphetamine. The subject admitted that he had been using methamphetamine intermittently for the past two weeks. The specimen was forwarded to a laboratory and confirmed to be positive for methamphetamine. The subject previously attended substance abuse counseling at Hina Mauka and mental health/substance abuse counseling with Dr. Kevin Connors. The subject declined an offer to enroll in additional counseling to include possible residential substance abuse treatment. The subject indicates that he already possesses the necessary knowledge to remain drug free. The subject does not consider himself to be someone that cannot refrain from illicit drug usage.

With respect to the subject's community service, the subject was assigned to perform his community service at a Hawaiian heiau site in Kailua. Shortly after being assigned there, the subject developed a condition with his feet that made it painful for him to walk and stand for long periods of time. Over the course of several months, the subject's condition improved and he was instructed to complete his community service. In January 2006, the subject performed approximately twenty (20) hours of community service. He has failed to perform the remaining hours since that time. When confronted, the subject has stated that he was too busy at work or that the community service site was too far from his home in Waipahu. He also blamed his failure to complete his hours on his truck breaking down and having to buy another vehicle which is not in good working order. The subject recently made a commitment to complete his remaining community service hours by 5/22/2006. He is expected to perform community service every weekend until his hours are completed. The subject has been warned that if he fails to follow through with this promise or uses illicit drugs again, our office will initiate revocation proceedings.

Our office believes that the subject is deserving of one last opportunity to show the Court that he can remain drug free and comply with the other conditions of supervision, to include the completion of his community service. In a final effort to sanction the subject and gain his full compliance, we are respectfully recommending that the Court modify the subject's conditions of supervision to require him to serve three (3) months of home detention with electronic monitoring. Should the subject fail to comply, our office would have essentially exhausted all intermediate sanctions available to us and would be recommending that revocation proceedings be initiated.

Respectfully submitted by,



FRANK M. CONDELLO, II
U.S. Probation Officer

Approved by:

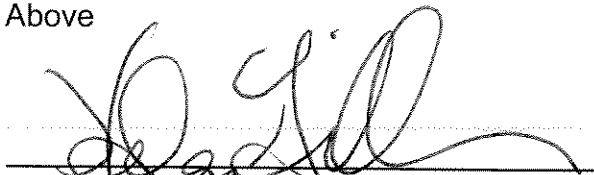


TIMOTHY M. JENKINS
Supervising U.S. Probation Officer

Date: 4/11/2006

THE COURT ORDERS:

- ☒ [X] The Modification of Conditions as Noted Above
☐ [] Other



HELEN GILLMOR
Chief U.S. District Judge

4.12.06
Date

PROB 49
(5/96)

United States District Court

District of Hawaii

Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify the conditions of supervision as follows:

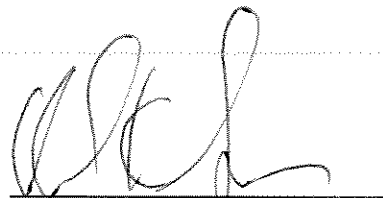
6. *That the defendant serve three (3) months of home detention with electronic monitoring as arranged by the Probation Office. During this time, the defendant shall remain at his place of residence during nonworking hours and shall not leave his residence without the approval of the Probation Office. The defendant shall wear an electronic monitoring device and follow electronic monitoring procedures pursuant to the Participant's Agreement and shall earn leave as determined by the Probation Office. The defendant also will be responsible for the payment of the electronic monitoring costs as directed by the Probation Office.*

Witness:



FRANK M. CONDELLO, II
U.S. Probation Officer

Signed:



RUDY K. SOUZA
Supervised Releasee

3/30/06

Date